

ESTTA Tracking number: **ESTTA118523**

Filing date: **01/08/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Arizant Healthcare Inc.
Granted to Date of previous extension	01/07/2007
Address	10393 West 70th Street Eden Prairie, MN 55433 UNITED STATES
Attorney information	Barbara Grahm Oppenheimer Wolff & Donnelly LLP 45 South Seventh Street Suite 3300 Minneapolis, MN 55402 UNITED STATES bgrahn@oppenheimer.com, pwheeler@oppenheimer.com Phone:612-607-7325

Applicant Information

Application No	78305642	Publication date	07/11/2006
Opposition Filing Date	01/08/2007	Opposition Period Ends	01/07/2007
International Registration No.	NONE	International Registration Date	NONE
Applicant	Gayl Sarbit, Attachments International, Inc. 831 - 112A Street Edmonton, Alberta, T6J 6W3 CANADA		

Goods/Services Affected by Opposition

Class 024. All goods and services in the class are opposed, namely: throw blankets with built in stimulators in the form of crystal beads, music boxes, plush toys, metal and plastic rings, small stones and pony beads for adults with Alzheimer's Disease

Attachments	HUGGER Opposition.pdf (4 pages)(167290 bytes)
Signature	/Barbara Grahm/
Name	Barbara Grahm
Date	01/08/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Arizant Healthcare Inc.)	Opposition No. _____
)	
Opposer)	Mark: HUGGER
)	
v.)	Serial No. 78305642
)	
Gayl Sarbit, Attachments International, Inc.)	Filing Date: 9/25/2003
)	
Applicant)	Published: 7/11/2006
_____)	

NOTICE OF OPPOSITION

Arizant Healthcare Inc., a Minnesota corporation located at 10393 West 70th Street, Eden Prairie, Minnesota 55344, believes it will be damaged by registration of the mark HUGGER shown in trademark application Serial No. 78305642, filed September 25, 2003, and published in the *Official Gazette* on July 11, 2006, and hereby opposes registration of the mark in Class 24, pursuant to the previously filed extensions of time to oppose. The grounds for opposition are as follows:

1. Applicant has filed an application to register on the Principal Register the designation HUGGER as a trademark for “throw blankets with built in stimulators in the form of crystal beads, music boxes, plush toys, metal and plastic rings, small stones and pony beads for adults with Alzheimer’s Disease” on the basis of Applicant’s intent to use the mark in the U. S., and Applicant’s Canadian registration for the HUGGER mark, Registration No. TMA619,601.

2. Arizant Healthcare Inc. (referred to herein as “Opposer” unless otherwise indicated), began using the trademark BAIR HUGGER at least as early as 1988, and has used the mark continuously since then for medical products including patient warming systems that are referred in the healthcare field as “warming blankets.”

3. Opposer is the owner of the following United States trademark registrations: Registration No. 1574673 for the mark BAIR HUGGER for “medical apparatus, namely, patient warming system primarily comprising warming unit, hose, disposable cover and controls therefor,” filed May 8, 1989, registered January 2, 1990, claiming use since April 8, 1988; Registration No. 1626928 for the mark BAIR HUGGER & Design for “medical apparatus, namely, patient warming system primarily comprising warming unit, hose, disposable cover and

controls therefor,” filed March 12, 1990, registered December 11, 1990, claiming use since April 8, 1988; Registration No. 2087204 for the mark BAIR HUGGER for “medical apparatus comprising patient body temperature management products, namely temperature monitors and forced air warming and cooling systems for patients, blood and IV fluids that primarily consist of a thermal unit, hose, tubing, body cover, and controls therefor,” filed April 15, 1996, registered August 12, 1997, claiming use since April 8, 1988; and Registration No. 2085579 for the mark BAIR HUGGER & Design for “medical apparatus comprising patient body temperature management products, namely temperature monitors and forced air warming and cooling systems for patients, blood and IV fluids that primarily consist of a thermal unit, hose, tubing, body cover, and controls therefor,” filed April 15, 1996, registered August 5, 1997, claiming use since April 8, 1988. Said registrations are incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and are therefore conclusive evidence of the validity of the registered marks and of the registration of the marks, of Opposer’s ownership of the marks, and of Opposer’s exclusive right to use the registered marks in commerce under Section 33 of the Lanham Act, 15 U.S.C. § 1115.

4. Opposer has advertised and promoted its BAIR HUGGER mark extensively. Opposer has also made substantial sales of products under the BAIR HUGGER mark. As a result of such use and promotion, Opposer’s BAIR HUGGER mark has developed and represents valuable goodwill inuring to the benefit of Opposer.

5. Upon information and belief, Applicant did not commence use of the HUGGER mark prior to Opposer’s first use of its BAIR HUGGER mark.

6. Opposer has priority with respect to the mark at issue in this opposition. Opposer adopted and commenced use of its BAIR HUGGER mark long before Applicant adopted or filed for registration of its HUGGER mark. Opposer’s use of the BAIR HUGGER mark commenced at least as early as 1988, fifteen years prior to the filing date of Applicant’s application, and the mark has been used continuously since that time.

7. Applicant’s HUGGER mark is nearly identical in sight, sound and commercial impression to Opposer’s mark.

8. Applicant’s HUGGER mark is confusingly and deceptively similar to Opposer’s previously used and duly registered BAIR HUGGER mark.

9. The goods identified in Applicant's application are so closely related to Opposer's goods that consumers are likely to be confused as to the source of Applicant's goods.

10. The potential consumers for Applicant's goods are consumers of Opposer's goods.

11. Due to the similarity between Applicant's claimed mark HUGGER and Opposer's previously used and duly registered BAIR HUGGER mark, the identity and/or relatedness of the parties' goods, and the overlap of consumers, customers and potential customers are likely to believe that Applicant's goods originate with Opposer, resulting in a likelihood of confusion in the marketplace and damage to Opposer.

12. Registration by Applicant of the mark HUGGER for Applicant's goods is likely to cause confusion or to cause mistake and deception in the healthcare field with Opposer's previously used and duly registered BAIR HUGGER mark among purchasers and potential purchasers of Opposer's and Applicant's goods, resulting in damage to Opposer.

13. Because of the nearly identical nature of the marks and the similarity and relatedness of the goods, registration of the HUGGER mark by Applicant is likely to cause confusion, mistake or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored or approved by Opposer.

14. Opposer's BAIR HUGGER mark is famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and became famous before Applicant commenced use of its mark.

15. Applicant's HUGGER mark is likely to dilute the distinctive quality of Opposer's famous BAIR HUGGER mark.

16. Registration of the mark shown in application Serial No. 78305642 will result in damage to pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that Applicant's registration of the term HUGGER be refused,

Please direct all correspondence to:

Barbara J. Grahm
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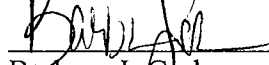
Opposer appoints Barbara Grahn, Erika Koster, Ed Laine, David Prange, Katie Wilhoit, Barbara Wrigley, Craig Lervick, Rudy Hofmann, Christopher Hilberg, Dena Van de Voort, and Adam Kiedrowski of the firm of Oppenheimer Wolff & Donnelly, LLP, its attorneys to transact all business in the U. S. Patent and Trademark Office relating to this matter with full power of substitution.

Please charge the \$300 filing fee to Deposit Account No. 50-1901, the deposit account of Opposer's counsel noted below.

Respectfully submitted,

ARIZANT HEALTHCARE INC.

By its Attorneys,



Barbara J. Grahn

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612-607-7325

Date: January 8, 2007